IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.553 of 2004
KRISHNA PANDEY
Versus
SHILA DEVI & ORS

8/ 15.07.2008 The order under challenge is dated 15.10.2004 passed by Sri Rajnath Singh, Deputy Labour Commissioner-cum-Commissioner, Workmen's Compensation Act, Magadh Division, Gaya, whereby and whereunder, he has directed the appellant Krishna Pandey, who was O.P. No. 1 there and Deo Ishwar Pandey, who was O.P. No. 2 but, who did not prefer any appeal, to pay Rs. 2,07,980/- by way of workmen compensation to the petitioner Shila Devi and four others, who were her dependent minor children within a month from the date of passing of the order, failing which to pay Rs. 9% interest per annum.

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Heard learned counsel for the appellant Krishna Pandey.

Nobody appears for respondents Shila Devi and others as also Deo Ishwar Pandey, who was also one of the O.Ps. along with this appellant before the Commissioner, Workmen's Compensation Act. Nobody appeared for them in spite of valid service of notice being treated on them.

The facts giving rise to the filing of Claim Case No. 33 of 2000 and thereby passing of the aforesaid impugned order, in short is that the deceased Krishna Paswan was an employee in a Rice Mill belonging to Deo Ishwar Pandey. On 28.01.2000 in the process of running of the said Rice Mill, the tank containing gas exploded, as a result of which Krishna Paswan died and some others also sustained

injuries, F.I.R. was also drawn and post mortem was held. The case of the claimant-respondent was that deceased Krishna Paswan was getting wages @ Rs. 500/- per week and entire family was dependent upon his earning.

Aforesaid claim case was registered and both sides were noticed, Deo Ishwar Pandey appeared through lawyer who filed written statement and thereafter it was adjourned for hearing on 18.10.2000. Both sides along with the respective counsels appeared and filed compromise petition. The learned Workmen's Compensation Commissioner rejected such compromise on the ground that neither any receipt nor any detail in respect of payment of any compensation to the aggrieved party has been mentioned by referring relevant Section 8(1) of the Workmen's Compensation Act (hereinafter referred to for the purpose of convenience as the 'Act') only. Formality as required under the laws have not been observed so he rejected compromise petition and directed for payment of the aforesaid amount.

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Contention of the learned counsel Sri Vinod Bihari Singh for the appellant is that Deputy Labour Commissioner-Cum-Commissioner, Workmen's Compensation Act is not duly empowered authority as provided in notification S.O. No. 1188 L&E dated 31st December, 1991 to dispose of any matter on contest.

The moment matter is contested, the compensation commissioner is duty bound to refer the matter to Labour Court for decision on contest. His second argument is that in case of rejection of compromise petition the parties i.e. claimants as well as respondents

before him ought to have been noticed and be given an opportunity but, so was not the compliance on his part as a result of which the opposite party/appellant were deprived of raising the issue in the appropriate forum.

In a nutshell it could be said that an ex-parte order was passed without observing norms and procedure as laid down under the relevant Act and law by an incompetent authority.

It has further been contended that so far the appellant Krishna Pandey is concerned he was not owner or partner of the said Mill, rather working himself an employee as Munshi. The fact which can also be corroborated from the concluding portion of the relevant investigation report of the police, wherein Deo Ishwar Pandey is said to be partners of the said mill with his father. So, question of paying any compensation by this petitioner–appellant Krishna Pandey does not arise.

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But matter of decision on merit in respect of his status can be on consideration of evidence only. Krishna Pandey seems to signed on the compromise petition filed before the Commissioner and there no such W.S. denying his status.

Be that as it may, in the present facts and circumstances, it could be stated that the impugned order was passed by the Workmen's Compensation Commissioner without giving an opportunity to the petitioner-appellant to contest the matter for which he was not competent to pass an order in case the matter was treated to be contested.

In the facts and circumstances, the impugned order is not sustainable in law. So, the same stands set aside with a direction to the Compensation Commissioner to give an opportunity to the appellant Krishna Pandey for contesting the matter, and pass an appropriate order so that it could be decided by a competent authority.

In the result, this appeal is allowed.

Sanjeet **(Subash Chandra Jha, J.)**

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